Civil Rev.Pet. No.832/1998
Smt.Rajmati
Versus S.B.B.J. & Ors.

Date of Order ::: 11/07/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. Vijay Yadav, for petitioner (plaintiffs)
Mr. Satish Khandelwal for Mr.J.K.Singhi, for respondent Bank

Instant petition has been filed by plaintiff petitioner assailing order dt.23/05/97 whereby District Judge, Sawai Madhopur has dismissed her application declining to proceed further in civil suit No.70/82.

Facts, in brief, are that earlier suit No.51/82 (17/93 New) was filed by State Bank of Bikaner & Jaipur against petitioner herein for recovery of amount in relation to three Hundi/Bills, to the tune of Rs.93631.71p. Thereafter petitioner herein also filed a suit No.70/82 before competent court of jurisdiction for recovery of amount under those three Hundi/Bills. Since both the suits were preferred by the same parties to dispute in regard to one and same three Hundi/Bills (1-Rs.28396.16p., 2-Rs.42290/- & 3-Rs.27045.55p.= Rs.98631.71p., referred to in para 3 of plaint) and the suit instituted by Bank was of prior date, an application was filed by respondent Bank U/s 10 CPC for stay of proceedings under suit No.70/82 instituted by petitioner herein, learned Trial Court, after hearing parties, stayed further proceedings in suit No.70/82 vide order dt.02/08/91 - since there was a common transaction of three Hundi/Bills which came for adjudication in suit instituted by Bank, learned trial Judge after adjudication of dispute in suit No.51/82 instituted

by Bank (for brevity "Bank-suit") finally decreed the suit vide judgment & decree dt.22/04/95 for recovery of Rs.36,139.52p. against petitioner herein along with interest, against which petitioner preferred 1st appeal which was dismissed by first appellate court and thereafter second appeal was preferred before this Court which is pendente.

After judgment & decree passed by learned trial Judge, an application was filed by petitioner herein on 20/12/95 with the prayer to reopen proceedings in his suit No.70/82 and contemporaneously Bank has also moved application on 02/08/96 to the effect that in view of final adjudication of dispute which stood resolved under judgment & decree dt.22/04/95, re-hearing of same issues in regard to three Hundi/Bills is barred by principle of res judicata in view of S.11, CPC. Both these applications were heard together by learned trial Judge and were disposed of by common impugned order dt.23/05/97 whereby it was held that proceedings initiated in both the suits since involve common dispute in regard to self same three Hundi/Bills, and once its adjudication has taken place resulting into delivery of judgment & issuing decree, there is no purpose now to serve for re-opening proceedings in suit No.70/82 instituted by petitioner and consequently, trial Judge rejected application of petitioner and allowed Bank's application. Hence this petition.

Counsel for petitioner submits that amount referred to in suit of petitioner and preferred by Bank are different and that being so, pecuniary jurisdiction of Court to examine suit was also

different; as such after final adjudication of dispute in Bank suit, Trial Judge committed error in not permitting reopening of proceedings in his suit No.70/82. Counsel further submits that in suit instituted by petitioner, six issues were framed as against 10 issues framed in Bank suit and therefore, certain issues framed in suit of petitioner remained unadjudicated because there was no reference in issues framed in Bank suit; as such very finding recorded by trial Court while passing order impugned is not supported by material on record and requires interference by this Court.

Counsel for respondent Bank has supported finding recorded by trial Court under order impugned and further submits that Hundi/Bills in dispute whereof was raised are one and the same and being common transaction among parties to both the suits either of petitioner or the Bank, after written statement was filed by petitioner in Bank suit, what has been left out are mere ancillary issues and in fact while adjudication of issues framed in Bank suit, defence of the petitioner has also been taken note of and once adjudication whereof has taken place and judgment has been passed by trial Judge which stood affirmed in first appeal, granting of permission to now re-open proceedings in suit No.70/82 is barred by principle of res judicata and in fact has been completely adjudicated upon by trial Judge in Bank suit vide judgment dt.22/04/95; as such no purpose would be served if permission is now granted to proceed further after re-opening the suit preferred by the petitioner.

I have considered contentions of Counsel for parties and with their assistance, examined material on record. This fact remained undisputed that Hundi/Bills referred to by petitioner in his suit as well as Bank suit are one and the same. Claim has been made for recovery of amount in regard to those three Hundi/Bills. 10 issues were framed in Bank suit and on final adjudication, decree has been passed in Bank suit vide judgment dt.22/04/95 in favour of the Bank to make recovery of Rs.36139.52p. against petitioner, which though has been affirmed in first appeal but pending adjudication in second appeal before this Court. Submission made by Counsel for petitioner that amount as referred to in respective suits differ and that being so, pecuniary jurisdiction of Court where suits were separately filed either by petitioner or the Bank does not tally being different amount sought for recovery under two suits, in my opinion are of no substance. Court below has examined complete material on record and recorded finding that all issues which were considered and adjudicated by trial Court in Bank suit are almost one and the same and what has been left out is only ancillary issues and once permission was granted affording opportunity to raise defence by way of written statement and the same stood adjudicated in details no purpose otherwise is now going to be served in reopening proceedings in suit preferred by petitioner. I have also gone through the record and find that substantial issues are almost one and self same common and ancillary issues are not substantial, which may require any adjudication particularly when substantive issues have already been adjudicated,

considered and decided by trial Court vide judgment & decree 22/04/95 Hence I do not find any error or material irregularity in finding recorded by learned trial Court under order impugned in instant revision petition.

Consequently this revision petition fails and is hereby dismissed with no order as to costs. However, it is made clear that observations made above will not come in any way of either of parties in proceedings pendente second appeal before this Court.

(Ajay Rastogi), J.

K.Khatri/832CRP1998